



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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August 18, 2006

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RAMON J. HIRSIG  
Executive Director

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the August 29, 2006 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1571, *Florists*.

Action 1 on the Agenda concerns revising Regulation 1571 to define who is a “florist” for purposes of the regulation.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the “Business Taxes Committee” page on the Board’s Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m.** on **August 29, 2006** in Room 121 at the address shown above.

Sincerely,

Randie L. Henry, Deputy Director  
Sales and Use Tax Department

RLH:llw

Enclosures

E-file now, find out how . . . [www.boe.ca.gov](http://www.boe.ca.gov)



cc: (all with enclosures)

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Mr. Neil Shah, Board Member's Office, Third District (via e-mail)  
Mr. Romeo Vinzon, Member's Office, Third District (via e-mail)  
Mr. Alan LoFaso, Board Member's Office, First District (via e-mail)  
Mr. Steve Kamp, Board Member's Office, First District (MIC 71 and via e-mail)  
Ms. Mira Tonis, Board Member's Office, First District (via e-mail)  
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)  
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)  
Mr. Ramon J. Hirsig (MIC 73)  
Ms. Kristine Cazadd (MIC 83)  
Mr. Robert Lambert (MIC 82)  
Mr. Randy Ferris (MIC 82)  
Mr. Brad Heller (MIC 82)  
Ms. Janice Thurston (via e-mail)  
Ms. Jean Ogrod (via e-mail)  
Mr. Jeff Vest (via e-mail)  
Mr. David Levine (MIC 85)  
Mr. Steve Ryan (MIC 85)  
Mr. Rey Obligacion (via e-mail)  
Mr. Todd Gilman (MIC 70)  
Mr. Kenneth Topper (via e-mail)  
Mr. Dave Hayes (MIC 67)  
Ms. Freda Orendt (via e-mail)  
Mr. Stephen Rudd (via e-mail)  
Mr. Joseph Young (via e-mail)  
Mr. Jeffrey L. McGuire (MIC 92 and via e-mail)  
Mr. Vic Anderson (MIC 44 and via e-mail)  
Mr. Larry Bergkamp (via e-mail)  
Mr. Geoffrey E. Lyle (MIC 50)  
Ms. Leila Khabbaz (MIC 50)  
Ms. Lynn Whitaker (MIC 50)  
Mr. Dave Rosenthal (MIC 50)



# AGENDA — August 29, 2006 Business Taxes Committee Meeting

## Regulation 1571, *Florists*

<b>Action 1 — Agreed Upon Items</b>	<p><b>REGULATION 1571, <i>Florists</i></b></p> <p><b>(a) DEFINITION.</b> <u>For purposes of this regulation, the term “florist” means a retailer who conducts transactions for the delivery of flowers, wreaths, etc., through a florist delivery association utilizing telephonic, electronic, or other means for the transmission of orders, except that the term “florist” shall not include any retailer that does not fulfill other florists’ orders for the delivery of flowers, wreaths, etc.</u></p> <p><b>(b) APPLICATION OF TAX.</b></p> <p>(1) Tax applies to amounts charged by a florist to <del>his</del> customers for the delivery of flowers, wreaths, etc., to points within California, even though <del>he</del> the florist instructs another florist to make the delivery, but in such case tax does not apply to amounts received by the florist making the delivery.</p> <p>(2) Tax applies to amounts charged by florists who receive orders for the delivery of flowers, wreaths, etc., to points outside this state and instruct florists outside this state to make the delivery.</p> <p>(3) The measure of tax includes charges made for <del>telegrams-faxes</del> or telephone calls whether or not the charges are separately stated. A “relay” or other service charge, made in addition to the charge for the <del>telegram-fax</del> or telephone call, must also be included in the measure of tax.</p> <p>(4) Tax does not apply to amounts received by California florists who make deliveries in this state pursuant to instructions received from florists outside this state.</p> <p>(5) <u>When a retailer of flowers who is not a florist instructs a California florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to the amounts received by the florist making the delivery, nor shall the florist making the delivery be treated as a drop shipper within the meaning of Regulation 1706.</u></p> <p>(6) <u>When an out-of-state florist instructs a California retailer of flowers who is not a florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to amounts received by the retailer making the delivery, nor shall the retailer making the delivery be treated as a drop shipper within the meaning of Regulation 1706.</u></p>
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Issue Paper Number **06 - 003**



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

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## **Proposed revisions to Regulation 1571, Florists, to clarify the application of tax to sales by florists**

### **I. Issue**

Should Regulation 1571, *Florists*, be amended to define who is a “florist” for purposes of the regulation?

### **II. Alternative 1 - Staff Recommendation**

In recognition of changes to the floral industry, staff and interested parties recommend amending Regulation 1571 as follows:

Define “florist” to mean a retailer who conducts transactions for the delivery of flowers, wreaths, etc., through a florists delivery association utilizing telephonic, electronic, or other means for the transmission of orders, except that the term “florist” shall not include any retailer that does not fulfill other florists’ orders for the delivery of flowers, wreaths, etc.

Clarify that when a retailer of flowers who is not a florist instructs a California florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to the amounts received by the florist making the delivery, nor shall the florist making the delivery be treated as a drop shipper within the meaning of Regulation 1706.

Clarify that when an out-of-state florist instructs a California retailer of flowers who is not a florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to the amounts received by the retailer making the delivery, nor shall the retailer making the delivery be treated as a drop shipper within the meaning of Regulation 1706.

Staff also proposes creating subdivisions within Regulation 1571, replacing gender-biased language in subdivision (b), and replacing the outdated term “telegram” with “fax” in subdivision (b)(3).

There is no operative date; amended regulation will become effective 30 days after approval by the Office of Administrative Law. A copy of staff’s proposed amendments is attached as Exhibit 2. See Formal Issue Paper pages 3-5, and Agenda Action Item 1.

### **III. Other Alternative(s) Considered**

Alternative 2 – Do not amend Regulation 1571, *Florists*.

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## **IV. Background**

Regulation 1571, *Florists*, was first adopted as Ruling 42 in 1933 to explain the application of tax to traditional sales of floral arrangements where one florist accepts the order and instructs another florist to make the delivery. The regulation was amended in 1971 to clarify which charges are included in the measure of tax, but the manner in which tax applies has remained the same since 1933. The term “florist” is not defined in Regulation 1571, but historically, the provisions of the regulation have been applied to all sellers of delivered flower arrangements, wreaths, etc.

In most traditional florist transactions, when a purchaser places an order with a florist and the order requires the florist to deliver flowers to a recipient outside the florist’s delivery area, the florist taking the order will send the order to a florist near the recipient for fulfillment and delivery. Most traditional florists are members of floral delivery associations (e.g., FTD, Teleflora) and the ordering, fulfillment, and delivery of flowers are often completed through affiliated members of these networks who both send and receive orders. In the past few years, however, some Internet-based florists have developed alternative systems to fill and deliver flower orders.

Being discussed are orders for the delivery of flowers inside and outside California. Under the current provisions of Regulation 1571, tax applies to amounts charged by California florists for all such orders regardless of whether another florist fills the order and makes the delivery outside California. Tax does not apply to amounts received by California florists for making deliveries in California pursuant to instructions received from other florists. Without the provisions of Regulation 1571, California florists would be subject to tax just like any other retailers. Regulation 1620, *Interstate and Foreign Commerce*, would apply to sales for delivery outside of California, Regulation 1684, *Collection of Use Tax by Retailers*, would apply to out-of-state sales for delivery in California, and Regulation 1706, *Drop Shipments*, would apply to California florists who deliver flowers in California pursuant to instructions from other florists.

The application of tax to orders taken by California florists for the delivery of flowers outside California was discussed in two separate cases heard by the Board in March 2002 and February 2006 which were decided in favor of the taxpayers. Both cases involved taxpayers who were located in California, but sold flowers exclusively through their Web sites and toll-free telephone numbers. In the first case, the taxpayer did not normally use a floral delivery association to fulfill and deliver orders. Instead, the taxpayer forwarded orders to: (1) growers who combined their own flowers with accessories provided by the taxpayer and shipped the arrangements by common carrier; or (2) packers who prepared the arrangements using flowers and accessories provided by the taxpayer and shipped the arrangements by common carrier. In the second case, the taxpayer used a floral delivery association; however, the taxpayer was a “send only” florist, meaning the taxpayer sent all orders to other florists for fulfillment and delivery, and did not fulfill any orders itself.

In both cases, the taxpayers pointed out that the current rules for florists were developed for florists who operate traditional flower shops. Since these taxpayers did not fit the traditional business model that Regulation 1571 was promulgated to address, these Internet-based retailers of flowers argued that they should not be considered “florists” for purposes of applying Regulation 1571. Rather, the taxpayers believed their sales for out-of-state delivery should be reported under the standard rules for transactions in interstate and foreign commerce provided in Regulation 1620. The Board found in favor of both taxpayers and referred the issue to the Business Taxes Committee (BTC) for review.

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Interested parties meetings were held on May 2, 2006 and June 22, 2006 to discuss ideas for amending Regulation 1571. Staff discussed its desire to amend the regulation to be consistent with the prior Board decisions. Staff and interested parties agreed that the current tax treatment of traditional florists should not be affected by the proposed amendments.

## **V. Alternative 1 - Staff Recommendation**

### **A. Description of the Staff Recommendation**

Staff proposes amending Regulation 1571 to define “florist” to mean a retailer who conducts transactions for the delivery of flowers through a florist delivery association, unless that retailer does not fulfill other florists’ orders for the delivery of flowers. Florists who meet this definition would continue to report their sales as they do under the current provisions of Regulation 1571. That is, a California florist would report tax on amounts it charges for the delivery of flowers, wreaths, etc., whether delivery is in California or outside California. A California florist would not report tax on amounts received for deliveries made pursuant to instructions received from other florists, or from retailers of flowers who are not florists. Thus, traditional florists would retain the administrative convenience of the current regulation and would not be held responsible for tax as drop shippers when they deliver flowers in California on behalf of an out-of-state florist or other retailer of flowers who is not a florist.

A California retailer who does not meet the definition of florist would report tax just like any other retailer. Tax would not apply to sales for delivery outside California as provided in Regulation 1620, and the provisions of Regulation 1706 would apply to the California retailer if it delivered flowers in California pursuant to instructions from other retailers who do not meet the definition of florist. A retailer who does not meet the definition of florist would also be subject to the provisions of Regulation 1684, Collection of Use Tax by Retailers, on sales made outside of California for delivery in California.

The following examples illustrate the application of tax under staff’s proposed revisions:

#### **Example 1 – Retailer Who Is a Florist**

The taxpayer operates a flower shop in California. The taxpayer takes orders from walk-in customers, over the phone, and through the store’s Web site. When orders are placed for delivery outside the florist’s area, the orders are sent via a florist delivery association to other florists for fulfillment and delivery. The taxpayer also receives orders from other florists through the florist delivery association to fill and deliver flowers to recipients in the taxpayer’s area. Occasionally, the florist receives orders to fulfill and deliver from other retailers of flowers who do not meet the definition of florist as provided in the proposed revisions to Regulation 1571.

In this example, tax will apply as it does under the current provisions of Regulation 1571. The taxpayer would report tax on amounts it charges to its customers for the delivery of flowers, wreaths, etc., whether delivery is in California or outside California. Tax would not apply to amounts received by the taxpayer for deliveries made pursuant to instructions received from another florist or a retailer of flowers who is not a florist.

#### **Example 2 – Retailer of Flowers Who Is Not a Florist**

There are two taxpayers located in California that do not operate flower shops. Floral arrangements are sold exclusively through the taxpayers’ Web sites and toll-free telephone

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numbers. The first taxpayer forwards orders to flower growers who assemble arrangements using their own flowers and vases/shipping materials provided by the taxpayer; and packers who assemble arrangements using flowers, vases, and shipping materials provided by the taxpayer. These orders are shipped by common carrier. The first taxpayer also uses a floral delivery association to forward orders for immediate delivery to traditional florists for fulfillment and delivery. The second taxpayer uses a floral delivery association to forward all of its orders to traditional florists for fulfillment and delivery. Both taxpayers do not fulfill and deliver orders from florists or other retailers of flowers.

In this example, the taxpayers are not florists under the proposed revisions to Regulation 1571. The taxpayers would not be subject to the provisions of Regulation 1571 and would be subject to the provisions of Regulations 1620, 1684, and 1706, when applicable.

Staff agrees with industry that current Regulation 1571 was designed for traditional florists and not the new types of floral businesses presented in the appeal cases heard by the Board. Staff believes the proposed amendments recognize the needs of this new business model while retaining the long-standing rules for traditional florists. Traditional florists will continue to be required to collect tax on sales that will be delivered outside California and will not be subject to Regulation 1706 when they deliver flowers in California on behalf of out-of-state florists or other retailers. Retailers of flowers who are not florists would apply Regulation 1620 to their transactions in interstate or foreign commerce, but would also be subject to the provisions of Regulations 1684 and 1706 when they deliver flowers in California pursuant to instructions from other retailers who do not meet the definition of florist.

Staff further believes the proposed amendments are consistent with the provisions of all other states' regulations for florists. Key to all the states' regulations is the provision that the person responsible for the tax is the retailer/florist who takes the initial order from the customer. The proposed amendments retain this provision for all transactions involving florists. Staff also believes that the proposed amendments result in the proper treatment of non-florists who make retail sales of flowers, wreaths, etc. because the amendments will require non-florists to report and pay tax under the same rules as other retailers, and permit the Board to apply Regulation 1706 to the presumably rare drop shipment scenario involving an out-of-state non-florist without nexus using a California non-florist to drop ship to a California customer or donee.

In addition to the proposed revisions discussed above, staff will also replace the gender-biased language in subdivision (b) and replace the outdated term "telegram" with "fax" in subdivision (b)(3) (see Exhibit 2).

## **B. Pros of the Staff Recommendation**

- Defines "florist" within Regulation 1571 to address the circumstances in both floral retailer appeal cases heard by the Board.
- Preserves the current tax treatment of traditional florists including the provision that tax does not apply to amounts received by florists making deliveries on behalf of out-of-state florists. The proposed amendments further clarify that florists are not considered drop shippers when they fulfill and deliver orders on behalf of out-of-state non-florists.
- Is consistent with the provisions of all other states' regulations for florists in that the responsibility for tax generally remains with the florist/retailer who takes the initial order from the customer.

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- Updates the regulation by removing gender-biased language and outdated terms.

**C. Cons of the Staff Recommendation**

It provides differing tax treatment for similar sales of flowers, wreaths, etc., based upon the type of retailer originally receiving the order.

**D. Statutory or Regulatory Change**

No statutory change is required. However, staff recommendation does require an amendment to Regulation 1571.

**E. Administrative Impact**

- Staff will be required to notify taxpayers of the amendments to Regulation 1571 through an article in the Tax Information Bulletin (TIB).
- Requires notification of Board staff explaining the affect of amendments on current audit procedures.

**F. Fiscal Impact**

**1. Cost Impact**

The workload associated with publishing the regulation and TIB article is considered routine, and any corresponding cost would be absorbed within the Board's existing budget.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

- Does not affect the reporting responsibilities of traditional florists.
- Retailers that do not meet the definition of a "florist" for the purposes of Regulation 1571 would report tax on their retail sales when the flowers will be delivered within California. When delivery is outside California, the retailer will report as provided in Regulation 1620.

**H. Critical Time Frames**

None. The amended regulation will become effective 30 days after approval by the Office of Administrative Law.

**VI. Alternative 2**

**A. Description of the Alternative**

Do not amend Regulation 1571.

**B. Pros of the Alternative**

Retains the current rules for florists that have been in place for over 70 years.

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**C. Cons of the Alternative**

- Current regulatory language does not take into account the prior appeal cases in which the Board determined certain floral retailers were not required to report under Regulation 1571 and continues to require similarly situated retailers to collect tax in accordance with its terms.
- Provides no guidance for retailers that operate similarly to the floral retailers in the prior appeal cases as to whether their business models continue to be subject to Regulation 1571.

**D. Statutory or Regulatory Change**

None.

**E. Administrative Impact**

None.

**F. Fiscal Impact**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1)

**G. Taxpayer/Customer Impact**

None.

**H. Critical Time Frames**

None.

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: 08/16/06



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## **Proposed revisions to Regulation 1571, Florists, to clarify the application of tax to sales by florists**

### **Alternative 1 - Staff Recommendation**

In recognition of changes to the floral industry, staff and interested parties recommend amending Regulation 1571 as follows:

Define “florist” to mean a retailer who conducts transactions for the delivery of flowers, wreaths, etc., through a floral delivery association utilizing telephonic, electronic, or other means for the transmission of orders, except that the term “florist” shall not include any retailer that does not fulfill other florists’ orders for the delivery of flowers, wreaths, etc.

Clarify that when a retailer of flowers who is not a florist instructs a California florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to the amounts received by the florist making the delivery, nor shall the florist making the delivery be treated as a drop shipper within the meaning of Regulation 1706.

Clarify that when an out-of-state florist instructs a California retailer of flowers who is not a florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to the amounts received by the retailer making the delivery, nor shall the retailer making the delivery be treated as a drop shipper within the meaning of Regulation 1706.

Staff also proposes creating subdivisions within Regulation 1571, replacing gender-biased language in subdivision (b), and replacing the outdated term “telegram” with “fax” in subdivision (b)(3).

### **Other Alternative Considered**

Alternative 2 – Do not amend Regulation 1571, *Florists*

### **Background, Methodology, and Assumptions**

**Revenue Estimate****Alternative 1 - Staff Recommendation**

Staff proposes amending Regulation 1571 to define “florist” to mean a retailer who conducts transactions for the delivery of flowers through a florist delivery association, unless that retailer does not fulfill other florists’ orders for the delivery of flowers. Florists who meet this definition would continue to report their sales as they do under the current provisions of Regulation 1571. That is, a California florist would report tax on amounts it charges for the delivery of flowers, wreaths, etc., whether delivery is in California or outside California. A California florist would not report tax on amounts received for deliveries made pursuant to instructions received from other florists, or from retailers of flowers who are not florists. Thus, traditional florists would retain the administrative convenience of the current regulation; and would not be held responsible for tax as drop shippers when they deliver flowers in California on behalf of an out-of-state florist or other retailer of flowers who is not a florist.

In most traditional florist transactions, when a purchaser places an order with a florist and the order requires the florist to deliver flowers to a recipient outside the florist’s delivery area, the florist taking the order will send the order to a florist near the recipient for fulfillment and delivery. Most traditional florists are members of floral delivery associations (e.g., FTD, Teleflora) and the ordering, fulfillment, and delivery of flowers are often completed through affiliated members of these networks who both send and receive orders. In the past few years, however, some Internet-based florists have developed alternative systems to fill and deliver flower orders.

A California retailer who does not meet the definition of florist would report tax just like any other retailer. Tax would not apply to sales for delivery outside California as provided in Regulation 1620, and the provisions of Regulation 1706 would apply to the California retailer if it delivered flowers in California pursuant to instructions from other retailers who do not meet the definition of florist. A retailer who does not meet the definition of florist would also be subject to the provisions of Regulation 1684, Collection of Use Tax by Retailers, on sales made outside of California for delivery in California.

Alternative 1 does not have a revenue impact because this alternative recognizes the fact that non-traditional retailers of flowers do not always fall within the scope of Regulation 1571. That is, a retailer of flowers, who does not fill orders from other florists operating primarily as a send only business, should not be subject to the same regulation to that of a traditional florist. In addition, the Board has ruled in favor of the appellant in two appeal cases brought forth by two retailers of flowers that operate primarily as a send only business. Although a Memorandum of Opinion was not issued in either of these cases, it is clear that other retailers of flowers operating primarily as a send only business should not be subject to Regulation 1571.

**Alternative 2**

Do not amend Regulation 1571, *Florists*.

**Revenue Estimate**

**Revenue Summary**

Alternative 1 – This alternative does not have a revenue impact.

Alternative 2 – The alternative does not have a revenue impact.

**Preparation**

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Dave Hayes, Manager, Research and Statistics Section, Legislative and Research Division, and Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of August 16, 2006

**REGULATION 1571. FLORISTS.**

*Reference:* Section 6012, Revenue and Taxation Code.

**(a) DEFINITION.** For purposes of this regulation, the term “florist” means a retailer who conducts transactions for the delivery of flowers, wreaths, etc., through a florist delivery association utilizing telephonic, electronic, or other means for the transmission of orders, except that the term “florist” shall not include any retailer who does not fulfill other florists’ orders for the delivery of flowers, wreaths, etc.

**(b) APPLICATION OF TAX.**

- (1) Tax applies to amounts charged by a florist to ~~his~~ customers for the delivery of flowers, wreaths, etc., to points within California, even though ~~he~~ the florist instructs another florist to make the delivery, but in such case tax does not apply to amounts received by the florist making the delivery.
- (2) Tax applies to amounts charged by florists who receive orders for the delivery of flowers, wreaths, etc., to points outside this state and instruct florists outside this state to make the delivery.
- (3) The measure of tax includes charges made for ~~telegrams~~ ~~faxes~~ or telephone calls whether or not the charges are separately stated. A “relay” or other service charge, made in addition to the charge for the ~~telegram~~ ~~fax~~ or telephone call, must also be included in the measure of tax.
- (4) Tax does not apply to amounts received by California florists who make deliveries in this state pursuant to instructions received from florists outside this state.
- (5) When a retailer of flowers who is not a florist instructs a California florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to the amounts received by the florist making the delivery, nor shall the florist making the delivery be treated as a drop shipper within the meaning of Regulation 1706.
- (6) When an out-of-state florist instructs a California retailer of flowers who is not a florist to make a delivery of flowers, wreaths, etc. in California, tax does not apply to amounts received by the retailer making the delivery, nor shall the retailer making the delivery be treated as a drop shipper within the meaning of Regulation 1706.